

**In the United States Court of Appeals  
for the Ninth Circuit**

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UNITED STATES OF AMERICA, APPELLANT

*v.*

GEORGE C. FINN, CHARLES C. FINN, INTERNATIONAL  
AIRPORTS, INC., A CORPORATION, PETER A. BANCROFT  
AND VINELAND ELEMENTARY SCHOOL DISTRICT OF  
KERN COUNTY, APPELLEES

AND

VINELAND ELEMENTARY SCHOOL DISTRICT OF KERN  
COUNTY, CALIFORNIA, APPELLANT

*v.*

UNITED STATES OF AMERICA, GEORGE C. FINN, CHARLES  
C. FINN, AND INTERNATIONAL AIRPORTS, INC.,  
APPELLEES

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*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION*

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**REPLY BRIEF FOR THE UNITED STATES**

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(I)



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## REPLY BRIEF FOR THE UNITED STATES

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We believe that, for the most part, the contention raised by appellees Vineland and International in their respective briefs have been answered in the Government's opening brief; however, some comment is appropriate in regard to a few issues discussed by them. No argument will be presented relating to Vineland's brief as appellant, since the part of the

decision from which Vineland appeals does not immediately concern the Government. Likewise, no comment will be made about the brief of Appellees Finn, if any, because at the time this reply brief was being prepared, we had not as yet received any briefs filed on behalf of the Finns even though the time therefore has already expired.<sup>1</sup>

1. *The Plane's Value When Transferred to Vineland.* Both Vineland (Vin. Br., pp. 17-20, 22-25) and International (Intl. Br., p. 5) rely heavily upon the fact that governing administrative regulations and procedure permitted transfers to educational institutions only if the property was "commercially unsalable." Vineland argues that the statutory purposes referred to by the Government in support of the restrictions of WAA Form 65 (*e. g.*, to prevent disruption of the market and related economic repercussions) are therefore inapplicable, on the theory that the sale of a valueless plane could not adversely affect the market.<sup>2</sup> In accordance with the regulation relied upon by appellees, the War Assets Administration de-

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<sup>1</sup> The Government has deferred filing this reply in the expectation that it would file a single reply to the briefs of all the appellees, including the Finns. In view of the Finns' failure to file a brief and the scheduling of oral argument on February 1, 1955, thought it undesirable to delay further the filing of a reply to the briefs already received. Consequently, this brief contains our reply to the briefs of Vineland and International, and we may submit a further reply brief directed to the Finns' brief should the court permit them to file out of time.

<sup>2</sup> It is interesting to note that, at the same time, Vineland takes the somewhat inconsistent position that other statutory objectives compelled the Government to transfer the plane with a minimum of restrictions so that it could be used for diverse economic purposes. If, as Vineland suggests, the plane was essentially un-

terminated that the dumping of some 11,000 planes would have effectively destroyed the market for such aircraft and the financial stability of all persons connected with it. Thus, collectively the sale of these planes into commercial channels would have made each worth very little, but individually each plane was valuable as the record in this case establishes. Expert testimony valued the plane in suit at \$5,000 on the date it was transferred to Vineland (R. 281, 285, 292), the advisory jury accepted that valuation (R. 116), and the district court incorporated the jury's responses into its findings of fact (R. 156) and repeated that value in its own separate finding (R. 150). The decision to sell the planes to schools can be considered as a compromise between the views of those who urged that all such planes be totally destroyed, for fear of their undermining the market, and of those who wished them to be sold outright, in the hope that they would benefit other portions of the economy. By transferring the planes to educational institutions with severe restrictions on the school's power to sell or use the planes, it was possible to gain some benefit from the planes without causing serious economic disturbances.

2. *Estoppel*. Vineland argues that it cannot be estopped to deny the validity of WAA Form 65 (Vin. Br., pp. 39-40) because the school could not have agreed to or acquiesced in an illegal act. However, the authorities which Vineland relies upon

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salable or worthless, no significant interference with its use results from the imposition of requirements that it be scrapped or that it not be flown.



merely repeat the established principle that a sovereign cannot be estopped by actions of its agents beyond their legal authority (Gov. Op. Br., p. 53, fn. 34). Thus, the school district could not be estopped to deny the validity of their sale to the Finns because the Superintendent had no legal authority to issue title documents where the sale had not conformed with the California statutes relating to sale of school property. Similarly, if the terms of WAA Form 65 were inconsistent with the Federal regulation or statute, the War Assets Administration employees who transferred the plane to Vineland on those terms were acting beyond their authority, and the Government could not be estopped to urge against all but a bona fide purchaser (see *infra*, p. 5) that the transfer to Vineland was void. There is no basis, however, for Vineland's contention that the authorized acts of its agents, in accepting Federal surplus property and agreeing to the terms of transfer, cannot serve as the basis for an estoppel or acquiescence in the terms as specified by WAA Form 65.<sup>3</sup>

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<sup>3</sup> On p. 43 of the brief for Vineland as appellee, it is contended that the issue of estoppel was not raised in the district court and is therefore unavailable in this Court. If Vineland means by this that the Government did not urge an estoppel in its complaint, where it would have been anticipatory pleading, they are quite right; and of course the issue was not raised in a replication since that pleading has been eliminated under the Federal Rules of Civil Procedure. However, the issue was presented to the district court in the Government's second supplemental memorandum in opposition to a motion to dismiss at pp. 16-17 (filed December 19, 1952), in the Government's reply memorandum of law at p. 7 (filed November 3, 1954), and in the statement of points on which appellant intends to rely (R. 1,002; Nos. 4, 5).



Relying upon this Court's decision in *United States v. Jones*, 176 F. 2d 278 (C. A. 9), International argues that the Government is estopped to deny that it has sold the plane to the school without any restrictions. The *Jones* case and Section 25 of the Surplus Property Act, which it interprets, stand for the proposition that sales documents issued by a disposal agency cannot be subsequently attacked by the Government as unauthorized in a suit against a bona fide purchaser. In the *Jones* case, the Government was not allowed to rescind an undisputed sale on the ground that the sale price had been unconscionably low through administrative error. No contention was made that the original transaction was not intended to be an outright transfer of title. In the instant case, however, the Government does urge that there has been no transfer of unencumbered title, and it is appellees who are challenging the validity of the transfer terms.

3. *Bona Fide Purchaser.* International's claim that it is a bona fide purchaser is wholly without basis in the record. The specific finding by the advisory jury, which the district judge incorporated into his findings of fact (R. 156), was that International did "have either knowledge or notice \* \* \* that the plaintiff, United States of America, claimed restrictions upon the use or sale of the airplane in suit" at the time it advanced funds to the Finns, performed labor, and furnished materials (R. 115). These findings are amply supported in the record by testimony that it was generally understood in that industry that planes held by educational institutions were subject to these restrictions (R. 308-311, 663-65), that the documents

included in the CAA file reviewed by International's attorney gave notice of these restrictions (R. 622-23, Finns' Ex. K-2, K-4), and that at the time of its negotiations with the Finns, a different party (Vine-land) had possession of the plane (Intl. 5, R. 113, Intl. Ex. B, C, E, F, G). International relies upon the general finding by the district court that International made the loan and bestowed the labor and materials "in the ordinary course of its business believing in good faith that Defendants Finn were true and lawful owners of the aircraft" (R. 152). If, as International contends, these two findings are inconsistent, then the general finding as to good faith must yield to the particular finding as to notice or knowledge. However, we submit that there is no inconsistency since the finding relied upon by International merely attempted to restate somewhat more succinctly the jury's finding that International did "in good faith believe that Defendants Finn were the true and lawful owners of the airplane in suit" (R. 194) at the critical time. In other words, International had notice or knowledge of the Government's claims but honestly believed that these claims were insubstantial; however, in legal terms, this does not entitle International to the special protection accorded a bona fide purchaser.<sup>4</sup>

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<sup>4</sup> Recognizing the impossibility of being a bona fide purchaser at common law while having notice or knowledge of the Government's adverse claims, International argues that a special new rule was established by Section 25 of the Surplus Property Act. Under this alleged new rule, one can be a bona fide purchaser as long as he honestly believes that known adverse claims can be defeated. International's only basis for this statement is a quota-

4. *The Transfer Document.* Both International and Vineland argue that the only document which could be considered a bill of sale or transfer document is the Sales Receipt (Intl. Ex. A-1, reprinted in International's Appendix B). We submit, however, that neither the Sales Receipt nor any other document was the transfer paper for this plane. The Sales Receipt contains no words of transfer and does not attempt to set forth most of the conditions. It is precisely what it purports to be, *viz*, a receipt for money paid by Vineland. The fact that no transfer document was ever issued demonstrates that title was never transferred. The provisions of WAA Form 65, which are stated to apply to all subsequent transfers under this educational program (Par. 8, R. 16), establish the conditions of the transfer. Form 65 is not a transfer document, but it does establish the understanding of the parties as to the significance of the transfer of possession.<sup>5</sup>

tion from the defendant's brief in the *Jones* case. That statement was not accepted by this Court either expressly or impliedly, and certainly the mere fact that the court decides in favor of one party does not mean that the court has thereby adopted every statement appearing in a prevailing party's brief.

<sup>5</sup> Appellees attempt to discredit some of the characterizations of the property interest transferred by the Government by claiming that equitable servitudes and determinable fees cannot be created for personal property. Not only does this contention overlook the fact that an agency established by Congress can dispose of property in any manner which it considers appropriate (see our main brief at p. 21), but it fails to consider the fact that the federal courts have recognized the applicability of these interests for personal property (see our main brief at p. 45). Thus, federal law, which governs this disposal of federal property, does recognize such property interests, and conflicting state rulings have no applicability.

5. *Damages.* At pp. 56–61 of its brief, Vineland argues at length that the Government could at most recover nominal damages for a breach of contract if the Government is not allowed to keep the plane, or for wrongful detention, if the Government's title is approved. Part of this claim is based upon Vineland's position that the plane was "commercially unsalable" at the time of its receipt from the Government; that argument is disposed of *supra*, p. 7. We urge that a decision as to the measure of the Government's damages need not be made by this Court and that this question can most appropriately be considered by the district court upon remand, since that court never had the occasion, in view of its disposition of the case, to make a finding on this question. We certainly do not accept Vineland's suggestion that the damages for breach would be nominal. If the Government does not recover the plane, Vineland's disregard for the terms of WAA Form 65 prevented the Government from having the plane used in the manner it had intended. Thus the Government should be entitled to recover a sum equal to the cost of placing an equivalent plane in a similar educational institution or using it as the Government otherwise desires. And if the Government is allowed to retain the plane, its damages for detention should be the rental cost for a similar plane during that period. This was the standard used by the district court to measure the damages owed by the Government; it should likewise be the measure of damages due to the Government.



## CONCLUSION

For the foregoing reasons and those set out in our main brief, we respectfully submit that the judgment below dismissing the Government's complaint and awarding affirmative judgment against the United States on the Finns' counterclaim should be reversed.

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